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In re Application of : **OFFICE OF PETITIONS**  
Levitt et al. :  
Application No. 09-939,209 : DECISION ON PETITION  
Filed: August 14, 2001 :  
Attorney Docket Number: :  
01-939-US :  
:

This is a decision on the petition under 37 CFR 1.78(a)(6), filed on April 30, 2002, to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of prior filed provisional application, number 60 228,021.

This Petition is hereby **granted**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(5), and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

- (1) the surcharge as set forth in 37 CFR 1.17(t);
- (2) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5) and the date the claim was filed as unintentional; and
- (3) the reference to the prior filed provisional application, supplied in an application data sheet, or as an amendment in the first sentence of the specification following the title. See 35 U.S.C. 119(e) and 37 CFR 1.78(a)(5). The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending nonprovisional application was filed on August 14, 2001, within 12 months of the filing date of provisional application number 60 228,021, filed on August 24, 2000 for which priority is claimed. A reference to the prior filed provisional application has been included in an Amendment adding the reference to the first sentence of the specification following the title.

The instant nonprovisional application was filed after November 29, 2000, and the claim for priority herein is submitted after the expiration of the period specified in 37 CFR 1.78(a)(5). Also, the petition was submitted during the pendency of the nonprovisional

application seeking the benefit of the prior filed provisional application. See 35 U.S.C. 119(e).

Accordingly, having found that the instant petition satisfies the conditions of 37 CFR 1.78(a)(6), for acceptance of an unintentionally delayed claim for priority under 35 U.S.C. 119(e), the petition to accept an unintentionally delayed claim of benefit of prior filed provisional application number 60/228,021, filed August 24, 2000, is granted as of the date of the filing of the petition.

A corrected filing receipt which includes the priority claim to provisional application number 60/228,021, filed August 24, 2001, along with the projected publication date of November 7, 2002, of the instant application accompanies this Decision.

This application will be forwarded to Technology Center 1600 for processing of the Amendment filed April 30, 2002, and for consideration of the claims under 35 U.S.C. 119(e) and 37 CFR 1.78(a)(5) for the benefit of the prior filed provisional application, number 60/218,021, filed on August 24, 2000.

Telephone inquiries concerning this matter should be directed to petitions attorney Derek L. Woods at (703) 305-0014.

*Frances Hicks for*  
Severly M. Flanagan  
Supervisory Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

*fmr*  
Conferee: Frances Hicks

Enclosure: Corrected Filing Receipt